

EVAN BAYH

INDIANA

463 RUSSELL SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1404  
(202) 224-5623  
<http://bayh.senate.gov>

1650 MARKET TOWER  
10 WEST MARKET STREET  
INDIANAPOLIS, IN 46204  
(317) 554-0750

# United States Senate

WASHINGTON, DC 20510-1404

July 15, 2009

RECEIVED

JUL 20 2009

U.S. EPA REGION 5  
OFFICE OF REGIONAL ADMINISTRATOR

Mr. Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

Dear Mr. Mathur,

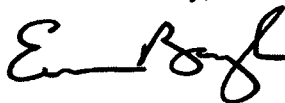
The purpose of this correspondence is to inform you of the seriously concerning conditions at VIM Recycling, Inc., in Elkhart, Indiana. I was notified about the situation at this facility by Indiana State Representative Craig R. Fry. After discussing the issue, Representative Fry and many of our constituents agree that VIM Recycling should if at all possible be shut down, due to serious and recurring violations of both health and environmental laws.

Both Representative Fry and the Chicago Region 5 EPA have expressed grave concerns about the open burning of wood at this facility. VIM was forced to move from its original location in Goshen, IN, due to complaints from neighbors about acrid smelling smoke and pollutants in the air. However, at its new location in Elkhart, IN, the company has not changed its behavior. There have been several accidents at the facility, one in 2007 involving an open fire that killed one worker and was left burning for days due to safety concerns. The Region 5 EPA (Chicago) sent representatives to this facility on May 5, 2009. Thereafter, a Notice of Violation was issued on May 8, 2009, to VIM Recycling stating that it had violated Section 110 of the Clean Air Act. However, on May 6, 2009, another worker was killed. The fact that VIM Recycling is still in business after such incidents is appalling.

I do not want to see any more Hoosiers lost or injured as a result of this company's apathy. The people of Indiana deserve better. I have spoken with another recycling facility within 30 miles of VIM that has agreed to take on its load, should it be necessary.

Thank you for allowing me the opportunity to express my concern over this issue and I look forward to hearing from you as soon as possible. Please contact my Regional Director, Julie Vuckovich, about this matter and the possibilities we can explore. She can be reached by phone at 574-236-8302 or by email at [Julie\\_Vuckovich@bayh.senate.gov](mailto:Julie_Vuckovich@bayh.senate.gov).

Sincerely,



Evan Bayh  
United States Senator

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**STATE OF INDIANA**  
**HOUSE OF REPRESENTATIVES**  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204

CRAIG R. FRY  
PO Box 1066  
MISHAWAKA, INDIANA 46546-1066

COMMITTEES:  
INSURANCE, CHAIR  
FINANCIAL INSTITUTIONS  
PUBLIC HEALTH

June 18, 2009

The Honorable Evan Bayh  
United States Senate  
130 S. Main Street, Suite 110  
South Bend, IN 46601

The Honorable Joseph Donnelly  
United States House of Representatives  
207 West Colfax Avenue  
South Bend, IN 46601

RE: VIM Recycling, Inc.  
Baugo Township - Elkhart, Indiana  
29861 Old U.S. 33  
Elkhart, IN 46516

Gentlemen:

Please consider this correspondence my request for help with a situation in Baugo Township-Elkhart, Indiana. I have worked on many constituent issues since 1988 but can say that none have illustrated the levels of government failure than this one. This neighborhood has suffered too long – local, state, and federal governments have contributed to their harm.

The United States Environmental Protection Agency (EPA) may be the only open avenue at this point in time.

Background

There was a fire and explosion on June 14, 2007, at VIM Recycling, Inc. that killed one worker and severely injured another. The explosion rocked the small children in a nearby house out of their beds; people could hear the men that were on fire screaming; and VIM's neighbors had to be evacuated. The fire burned for days and it took over 300 firefighters to fight the blaze. It was after this tragedy that my office was contacted by area residents for assistance. I am astounded and horrified by what I have learned about VIM and state and local governments' attempts at protecting this company over the health, safety, and rights of the people in that Baugo Township neighborhood.

Government at the state and local levels have failed VIM's Baugo Township neighbors and the people of Indiana who depend on regulatory agencies to keep the air they breathe clean, their neighborhoods safe, and companies operating within the law. VIM hired Tom Holt as the spokesperson to represent its interests. Mr. Holt is on the Elkhart County Planning Board. Objections to his dual role and conflict of interest issues were raised by the Baugo Township

neighbors, but their objections were dismissed by the Elkhart County Commissioners until they were finally able to obtain legal counsel to address the issue. Although IDEM will state that the goings on locally are not their responsibility, I disagree. In the absence of environmental enforcement at the local level, it is IDEM's responsibility to step in. It is only through the totality of the facts that a determination can be made.

VIM Recycling, Inc. was located in Goshen, Indiana, prior to moving to its current location in Baugo Township. From all accounts it was a bad neighbor in Goshen, too, and was forced to move. So it was moved to its current location to begin again. Only this time most of its neighbors were homes, schools, and daycare facilities - those without deep pockets.

VIM had an opportunity to turn over a new leaf at its new Baugo Township location; but before long it reverted to its old ways. Neighbors complained and some local county officials were dismayed - but not enough to get tough and enforce laws and regulations. I am not quite certain who or what made VIM's actions acceptable; why Elkhart County would rather change its zoning ordinances to fit VIM instead of enforcing the ordinances it has; why an Elkhart County Commissioner's testimony at the November 20, 2008 air permit renewal hearing did not truthfully portray what occurred at VIM's zoning request; or why IDEM admittedly chose not to enforce their own order and provisions of VIM's air permit. Perhaps that information will only emerge if this goes to trial and people are deposed under oath. The pieces of the puzzle may eventually come together.

In addition to the health, safety, and quality of life issues expressed by the residents in the neighborhood surrounding VIM, there are still outstanding issues regarding VIM. At a minimum VIM knowingly and willfully failed to meet the deadline of September 30, 2008, to remove the "C" pile as outlined in the Agreed Order (State of Indiana/County of Marion/ Commissioner of the Department of Environmental Management v. VIM Recycling, Inc., Case No. 2006-15827-S); there is a pending lawsuit brought against VIM by the State Fire Marshall; and recent U.S. Congressional Hearings have brought to light issues associated with materials used in recreational vehicles and trailers validating the health and safety concerns expressed by the Baugo Township neighborhood. It is still operating without a Solid Waste Permit or an approved Marketing and Distribution Plan for one of its products.

VIM's "B" pile should have been regulated material and not subject to outside grinding because of its contents. According to correspondence from Megan Tretter of IDEM, the "B" pile contains "some treated wood such as paneling, particle board and wood debris from manufactured homes and recreational vehicles."

First and foremost is the consideration of the health and safety concerns of the Baugo Township neighborhood surrounding VIM. State agencies were informed in July, 2007, that after VIM moved to its Baugo Township location some area residents experienced severe breathing problems, worsened asthma conditions, rashes, and children with nose bleeds that disappeared when they left home for a couple of weeks. Putrid odors are also experienced to the degree that it induces vomiting in adults and children alike. Residents informed IDEM and other state and local agencies in public meetings that the dust generated by VIM was so thick that vehicle windows had to be cleaned before cars could be driven; dust, with a consistency that couldn't be

brushed or dusted away, coated the inside surfaces of their homes; the water in bird baths and children's swimming pools turned red or yellow from something in the air; and fiberglass was found on the premises and believed to be mulched with wood products. In addition to the homes in the area there is an elementary school, daycare facilities, and businesses. The residents of this neighborhood have been breathing this putrid air, the true content of which is unknown, 24 hours a day/seven days a week for many years.

Inhabitants of the Katrina trailers experienced health problems severe enough to prompt Congressional Hearings. The recent Congressional Hearings addressed the elevated levels of formaldehyde found in travel trailers FEMA provided to victims of the Gulf Coast hurricanes of 2005 and addressed their alleged health complaints. In the U.S. House of Representatives Committee on Oversight and Government Reform, Majority Staff Analysis dated July 9, 2008 – *Trailer Manufacturers and Elevated Formaldehyde Levels* – health issues were addressed. Citing the International Agency for Research on Cancer, *IARC Classifies Formaldehyde as Carcinogenic to Humans* (June 15, 2004) and Consumer Product Safety Commission, *An update on Formaldehyde* (1997 Revision), pages 4-5, it says "Formaldehyde is a chemical widely used in building materials, often as a component of glue, adhesives, paint, or coatings. It has been classified as a 'known carcinogen' by the International Agency for Research on Cancer. It can also cause a number of acute adverse health effects at elevated levels, including: burning sensations in the eyes, nose, and throat; coughing and chest tightness; nausea; and skin rashes and allergic reactions."

Testimony from former Gulf Stream employees is contained on pages 10 and 11 of the above referenced report and contains similar health-related reports. "One employee said that these adverse health effects included 'nose bleeds,' 'shortness of breath,' 'dizziness,' and 'ears bleeding.' The other described it as a 'sinus infection that lasted the whole time I was there.'" Employees also talked about a "strong odor."

Testimony of the manufacturers was also included in the report. One reported that an outside contractor tested a trailer whose formaldehyde levels (1,520 ppb) were high enough to require specific actions be taken. The manufacturer was instructed to "post signs on the trailer unit stating 'hazardous – do not enter'" and to "ensure that 'only hazardous waste trained personnel remove any materials or items within the trailer,' and guarantee that 'all items or materials removed from the trailer unit are to be classified as hazardous materials.'" The report further states that "All bed and seating fabric and foam materials were subsequently removed from the trailer and the trailer was tested again. The concentrations of formaldehyde were found to have increased to 3,220 ppb. The testing contractor concluded that 'a source or sources of formaldehyde are still present within the trailer and are off-gassing.' The contractor reported: 'The higher concentration of airborne formaldehyde for the second air sample ... indicates that the fabric and foam bedding and seating materials were enclosing formaldehyde. ... Once exposed to the open air, the formaldehyde within the wood began off-gassing. This off-gassing of formaldehyde caused the concentration of airborne formaldehyde to increase, as the data indicates.'" (Pages 20-21).

If some of these products were deemed hazardous materials and required special handling, the contents of VIM's B and C piles may also contain hazardous materials since they contain

discarded materials from the manufactured housing industry and should be treated as hazardous waste. VIM's B pile should have been regulated because of the potential danger of its contents and because IDEM was fully aware of those contents. IDEM allowed VIM to grind this material and the "C" pile material in the open air and admittedly chose not to enforce the provisions of the air permit. IDEM continues to give a wink and a nod to polluters. Mike Aylesworth acknowledged IDEM was allowing an exception to VIM's permit by providing verbal authorization for the outside grinding of the C pile (Elkhart Truth, September 12, 2007). In response to my request for the statutory authority for IDEM to issue a verbal permit or order in this regard, Commissioner Thomas Easterly acknowledged in his October 30, 2007, letter to me that "IDEM has not issued a 'verbal permit or order' to VIM Recycling but rather has orally communicated its intent to exercise its enforcement discretion." It has also been publicly acknowledged that IDEM does not want to shut VIM down because it does not want to inherit the cleanup of the property. What kind of message does that send to polluters and the citizens and employees who are relying on IDEM?

There is much unknown information about the adverse impact formaldehyde has on people or definitely which products generated all of the chemicals found in the trailers. What we do know is that much of the refuse from trailer manufacturers are located at VIM. Since some of the inhabitants of these units and manufactured housing employees experienced the exact same medical issues as some of the residents in Baugo Township, the materials situated on VIM property should be removed as quickly and safely as possible. The materials that are airborne and settled in the residents' homes may be causing adverse conditions. When heated, disturbed, and/or ground do the contents of these huge piles emit toxic fumes? The piles around VIM have been smoldering since the June 2007 fires and VIM continues to grind its materials. What is in the dusty grime that settles inside the homes and vehicles? Is it safe for the Baugo Township residents to inhale these materials?

An Associated Press article reported July 9, 2008 (*Indiana trailer makers to testify in Hurricane Katrina hearing*) at thestarpress.com states "The report also faults the Centers for Disease Control and prevention, FEMA and the Environmental Protection Agency for controversial testing that led to misleading results about the formaldehyde exposure. Last year scientists tested hundreds of FEMA trailers and found potentially dangerous levels of formaldehyde." Neighbors of VIM in Baugo Township have been let down by every level of government.

The Recreational Vehicle Industry responded to the needs of people in crisis after the hurricanes hit. It did all that was asked of it. Its workers put in long hours and all were committed to assisting the hurricane victims. Now that there is greater knowledge about the dangers of formaldehyde, the Recreational Vehicle Industry is voluntarily changing its practices to conform to the more restrictive formaldehyde emissions levels proposed by the California Air Resources Board. They stepped up. Now the State and Federal governments must do the same and recognize the negative impact that VIM's activities are having on the health and safety of its neighbors who have also lost the use of their property and saw their property values negatively impacted.

The Commissioner of the State Department of Health and the Elkhart County Health Officer have failed these Baugo Township residents. On July 19, 2007, I advised Dr. Judith Monroe, Health Commissioner of the Indiana Department of Health (ISDH), of the health problems

experienced by the Baugo Township neighborhood and asked her to perform a health survey to determine the impact VIM's emissions were having on the neighborhood. In her letter to me dated August 14, 2007 she informed me that her agency "does not regulate environmental contaminants. The Indiana Department of Environmental Management (IDEM) has assured us that no hazardous materials are leaving the plant." She continued to discuss how difficult it would be to investigate. Therefore, it was no surprise that instead of focusing on the neighborhood, the ISDH reviewed a broader segment of the Elkhart County population, which served to dilute the results of its findings. In addition, many of VIM's immediate neighbors never received a health survey – these were the specific people that the Commissioner was asked to survey.

Residents report that the local Elkhart County Health Officer does not respond to their pleas for help.

Another very disturbing situation occurred in that Baugo Township neighborhood: in early September 2007 someone posing as an Indiana State Department of Health employee collected health information from some of the neighbors. This survey was before the ISDH's half-hearted attempt. Phone calls were made to the state and local health officers and IDEM on or about September 10, 2007 to determine whether their offices collected the information – all reported that they were not collecting health information and had no knowledge of who was. The identity of the person(s) posing as ISDH employee(s) and collecting private health information from the neighborhood has never been determined. It leads one to wonder who would have an interest in obtaining that information.

In March, 2009, I contacted various people in the U.S. EPA to seek assistance with this terrible situation. It was my hope that the new administration would be more proactive in protecting the health, safety, and property of people and our environment. I had conversations with Lisa Jackson's office and Region 5 employees and made written requests for assistance. Their initial response was a typical bureaucratic response but provided a Region 5 contact person – Paul Ruesch. In our conversation, it appeared that the EPA was outraged at the conditions at VIM and was committed to removing this hazard from the neighbors.

On May 6, 2009, there was another tragic industrial accident at VIM that killed one worker. I have been told that this gentleman was also undocumented. The EPA was out there the day before and warned VIM because they were not wearing protective gear. It appears that this worker was wearing his orange jacket at the time of the accident but may not have had on his hard hat.

Now I have learned that the EPA entered into another agreement with VIM giving them time to clean up their mess. Really? More time? VIM hires undocumented workers, is operating without a Solid Waste Permit, continues selling a product for which it has no Marketing and Distribution Permit, negatively impacts the health and safety of its neighbors, reduces the value of the neighbors' property, places VIM on an elevated playing field so other law-abiding companies have difficulty competing with them, and various legal actions.

I need your assistance to protect our constituents. These people live in fear of another fire every day – firefighters admit that the neighborhood is in jeopardy and don't want to enter the facility for their safety either. The smell that permeates the neighborhood is putrid and robs the neighbors of the use of their property. The air quality impacts their health. Area businesses complain of the smell and cannot understand how people can live in the neighborhood since it is difficult to be there just eight hours a day. People who have invested in new energy efficient furnaces have to turn them off on some days or nights because some of these units draw air from the outside, which draws more of the odor inside.

The injustices that have occurred in this neighborhood at every level of government are truly unconscionable. I respectfully request your assistance in righting these wrongs and bringing fairness back to this community. For a quick synopsis of some of the pending actions and news articles concerning this situation, please visit the website of the Legal Environmental Aid Foundation (LEAF) of Indiana, Inc. at [www.leafindiana.org](http://www.leafindiana.org).

Please contact my legislative assistant, Marilyn Cage-(317-232-9822 direct dial/800-382-9842 toll free in Indiana), if you would like additional information or documentation to facilitate my request. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig R. Fry". The signature is fluid and cursive, with the first name "Craig" and last name "Fry" clearly distinguishable.

Craig R. Fry  
State Representative  
House District 5

CRF/msc